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Of Attorneys for Defendants

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

CV'09-1094-SU
Case No. _____

ALLEN HAMILTON and **LOIS**
HAMILTON husband and wife,

Plaintiffs,

vs.

SILVEN, SCHMEITS & VAUGHAN,
P.C., an Oregon Professional
Corporation, and **ALAN J.**
SCHMEITS,

Defendants.

DEFENDANTS'
NOTICE OF REMOVAL

Please take notice that Defendants Silven, Schmeits & Vaughan,
P.C. and Alan J. Schmeits hereby remove this action from the
Circuit Court of the State of Oregon for the County of Baker to the

#29111

United States District Court for the District of Oregon.

1. Defendants are parties in a civil action brought against them in the Circuit Court of the State of Oregon for the County of Baker, entitled: *Allen Hamilton and Lois Hamilton v. Silven Schmeits & Vaughan, P.C. and Alan J. Schmeits*, Case No. 09-479. A copy of the Summons, Complaint and Motion to Disqualify the Honorable Russell B. West in that action is attached to this notice and constitutes all process, pleadings, and orders served on defendants in that action up to the present date.

2. The state court action was commenced when the Complaint was filed with the county clerk for Baker County, Oregon, on or about July 23, 2009. A copy of the Summons and Complaint was served on August 18, 2009, by personal service on Alan J. Schmeits. Defendants have filed no pleadings in this cause. This Notice of Removal is filed within 30 days after service of process.

3. The state court action is a controversy between citizens of different states. When the Summons and Complaint were served, Plaintiffs were, and now are, citizens of the State of Washington; Defendant Alan Schmeits was, and now is, a citizen of the State of Oregon; and Silven Schmeits & Vaughan, P.C. was, and now is, an Oregon Professional Corporation with its principal place of business in Baker County, Oregon.

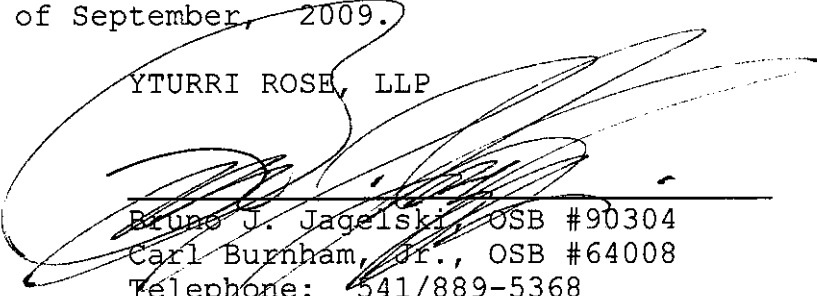
4. This is an action of civil nature over which this Court has original jurisdiction pursuant to 28 USC §1332(a), in that it

is a suit for damages on account of alleged legal malpractice in which the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs and is between citizens of different states.

5. This notice is signed pursuant to FRCP 11.

DATED this 14 day of September, 2009.

YTURRI ROSE, LLP



Bruno J. Jagelski, OSB #90304
Carl Burnham, Jr., OSB #64008
Telephone: 541/889-5368
Of Attorneys for Defendants

CONFORM AND RETURN TO
Charles M. Simmonds

2009 JUL 23 PM 4:45
TRIAL COURT CLERK

BY _____

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF BAKER

ALLEN HAMILTON and LOIS HAMILTON,
husband and wife,

Plaintiffs,

v.

SILVEN, SCHMEITS & VAUGHAN, P.C., an
Oregon Professional Corporation, and ALAN J.
SCHMEITS,

Defendants.

No. 09-479

COMPLAINT

(Legal Malpractice)

(Not Subject to Mandatory Arbitration)

1.

Plaintiffs reside in Lewis County, Washington.

2.

Defendant Alan J. Schmeits is an attorney licensed to practice in the state of Oregon and maintains an office in Baker County, Oregon. Defendant Schmeits is employed by Silven, Schmeits & Vaughan, P.C. and was acting at all times in the scope of that employment.

3.

Venue is appropriate in this county because the cause of action arose in this county.

1 4.

2 Plaintiffs own certain real property in Baker County, Oregon that borders property
3 owned by Edward and Patricia Elms, Trustees of the Elms Family Trust ("the Elms"). In
4 August 2006 the Elms filed a lawsuit against Plaintiffs, entitled *Edward and Patricia Elms,*
5 *Trustees of the Elms Family Trust, Plaintiffs, v. Allen Hamilton and Lois Hamilton, husband*
6 *and wife, Defendants, v. American General Finance, Inc., a Washington Corporation, Co-*
7 *Defendant,* Baker County Circuit Court Case No. 06-529, asserting claims of ejectment and
8 trespass and seeking a declaratory judgment fixing the property boundary and an injunction
9 prohibiting further encroachments on the Elms property.

10 5.

11 Plaintiffs retained Defendants to represent them in the lawsuit. Defendants received
12 valuable consideration to represent Plaintiffs and undertook to do so. In October 2006,
13 Defendants filed eight separate counterclaims against the Elms on Plaintiffs' behalf. The
14 Elms filed numerous motions for summary judgment which the court heard on August 22,
15 2007.

16 6.

17 Following the hearing, the court granted the large majority of the Elms' summary
18 judgment motions, with the result that all of Plaintiffs' counterclaims against the Elms were
19 dismissed, and the Elms prevailed on their claims for relief.

20 7.

21 On September 10, 2007, before the action was fully resolved, Defendants filed a
22 motion to withdraw as Plaintiffs' attorneys of record, which the court allowed on September
23 12, 2007, giving Plaintiffs 14 days to obtain new counsel and file an amended answer and
24 counterclaim. Defendants failed to promptly notify Plaintiffs of their intention to withdraw or
25 of the court's order allowing them to withdraw.
26

Count 1 (Breach of Contract):

8.

Plaintiffs incorporate by reference all preceding averments as if fully set forth herein.

9.

At the time Plaintiffs hired Defendants, Plaintiffs and Defendants entered into an attorney-client contract. An implied term of the contract was that Defendants would provide Plaintiffs with reasonably competent representation.

10.

Plaintiffs fully performed all of their obligations under the terms of the parties' contract and all conditions precedent to Defendants' obligations occurred.

11.

Defendants breached the contract by:

- a. Failing to adequately investigate the facts of the case, including failing to interview all witnesses with knowledge of the facts who would have provided favorable testimony.
- b. Failing to file a timely response to the Elms' motions for summary judgment supported by affidavits, declarations, and other supporting documents made on personal knowledge and setting forth facts that would be admissible in evidence showing that there were genuine issues of material fact for trial as required by ORCP 47.
- c. Failing to keep Plaintiffs reasonably informed of the status of the case, failing to provide to and review with Plaintiffs all of the evidence in the case, failing to promptly comply with Plaintiffs' reasonable requests for information, and failing to adequately advise Plaintiffs of the strengths and weaknesses of the case.

1 d. Withdrawing without any basis for good cause, without notifying Plaintiffs or
2 giving them an opportunity to be heard, and without taking steps to the extent
3 reasonably practicable to protect Plaintiff's interests.
4

5 12.

6 As a direct result of Defendants' breach of contract, Plaintiffs have suffered economic
7 damages in the amount of \$300,000.

8 Count 2 (Professional Negligence):

9 13.

10 Plaintiffs incorporate by reference all preceding averments as if fully set forth herein.

11 14.

12 Defendants' representation failed to satisfy the professional standard of care in the
13 particulars listed in paragraph 12, above, each act or failure to act being foreseeable that
14 damage to Plaintiffs would occur.

15 15.

16 As a direct result of Defendants' negligence, Plaintiffs have suffered economic
17 damages in the amount of \$300,000.

18 * * * * *

19
20 WHEREFORE, Plaintiffs pray for judgment in their favor and against Defendants for
21 economic damages in the amount of \$300,000, for Plaintiffs' costs and disbursements, and for
22 such other relief as the Court deems just and equitable.

23 Dated this 23 day of July, 2009.

24
25 
26 Charles M. Simmons, OSB #02455

Attorney for Plaintiffs

Served
AUG 18 2009
11:10 AM
KH

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF BAKER

ALLEN HAMILTON and LOIS HAMILTON,
husband and wife,

Plaintiffs,

vs.

SILVEN, SCHMEITS & VAUGHAN, P.C., an
Oregon Professional Corporation, and ALAN J.
SCHMEITS,

Defendants.

Case No. 09-479

SUMMONS

TO: Silven, Schmeits & Vaughan, P.C.
1950 3rd Street
Baker City, OR 97814

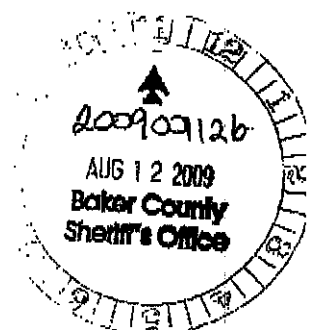
You are hereby required to appear and defend the Complaint filed against you in the above-entitled cause within thirty (30) days from the date of service of this Summons upon you, and in case of your failure to do so, for want thereof, Plaintiff will apply to the Court for the relief demanded in the Complaint.

///

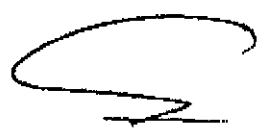
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Page 1 of 2 - SUMMONS

STUNZ, FONDA, KYUNA & HORTON, LLP
ATTORNEYS AT LAW
108 Main Street
P.O. Box 1565
Nyssa, OR 97913
(541)372-2268




1 **NOTICE TO DEFENDANT:**
 2 **READ THESE PAPERS CAREFULLY!**
 3 You must "appear" in this case or the other side
 4 will win automatically. To "appear," you must file
 5 with the Court a legal paper called a "Motion" or an
 6 "Answer." The "Motion" or "Answer" must be given
 7 to the court clerk or administrator within thirty (30)
 8 days along with the required filing fee. It must be in
 9 proper form and have proof of service on the
 10 Plaintiff's attorney or, if the Plaintiff does not have
 11 an attorney, proof of service on the Plaintiff.
 12 If you have any questions, you should see an
 13 attorney immediately. If you need help in finding an
 14 attorney, you may call the Oregon State Bar's
 15 Lawyer Referral Service at (503) 684-3763 or toll-
 16 free in Oregon at (800) 452-7636.



 Charles M. Simmons, OSB No. #02455
 40 South Oregon Street
 Ontario, Oregon 97914
 E-mail: csimmons@raderlaw.com
 Telephone: (541) 881-0477
 Facsimile: (541) 881-0479
 Attorney for Plaintiff

11 STATE OF OREGON)
 12) ss.
 13 County of Malheur)

14 I, the undersigned attorney of record for the Plaintiff, certify that the foregoing is an
 15 exact and complete copy of the original Summons in the above-entitled cause.


 Charles M. Simmons, OSB No. 02455
 Attorneys for Plaintiff

16
 17
 18
 19
 20 TO THE OFFICER OR OTHER PERSON SERVING THIS SUMMONS: You are hereby
 21 directed to serve a true copy of this Summons, together with a true copy of the Complaint mentioned
 22 therein, upon the individual(s) or other legal entity(ies) to whom or which this Summons is directed, and
 23 to make your proof of service on the reverse hereof or upon a separate similar document which you shall
 24 attach hereto.


 Charles M. Simmons, OSB No. 02455
 Attorneys for Plaintiff

2009 JUL 23 PM 4:45
 TRAIL COURT CLERK

BY _____

IN THE CIRCUIT COURT OF THE STATE OF OREGON
 FOR THE COUNTY OF BAKER

ALLEN HAMILTON and LOIS HAMILTON,
 husband and wife,

Plaintiffs,

v.

SILVEN, SCHMEITS & VAUGHAN, P.C., an
 Oregon Professional Corporation, and ALAN J.
 SCHMEITS,

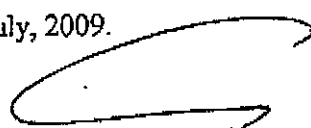
Defendants.

No. 09-479

Motion to Disqualify The Honorable
 Russell B. West

Plaintiffs move the Court for an Order disqualifying The Honorable Russell B. West from hearing or determining any issue of law or fact in this case. Plaintiffs believe that they cannot have a fair and impartial trial or hearing before said Judge. This Motion is made in good faith and not for the purpose of delay and is supported by ORS 14.210, 14.250, 14.260 and 14.270 and by the attached Declaration of Charles M. Simmons.

Dated this 23 day of July, 2009.


 Charles M. Simmons, OSB #02455
 Attorney for Plaintiffs

08/25/2009 09:22 5415235

SS&V

PAGE 09/10

2009 JUL 23 PM 4:45

Baker County Clerk

BY _____

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF BAKER

ALLEN HAMILTON and LOIS HAMILTON,
husband and wife,

Plaintiffs,

v.

SILVEN, SCHMEITS & VAUGHAN, P.C., an
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SCHMEITS,

Defendants.

No. 09-479

Declaration of Charles M. Simmons in
Support of Motion to Disqualify The
Honorable Russell B. West

DECLARATION

STATE OF OREGON

County of Malheur

} ss.

I, Charles M. Simmons, declare under penalty of perjury that I have read this
Declaration, that it is based on my personal knowledge, and that I am competent to testify to
the matters in this Declaration:

1. I am the attorney for Plaintiffs in this case.

2. I believe that my client cannot have a fair and impartial trial or hearing before

The Honorable Russell B. West.

2009 JUL 27 AM 9:51

TRIAL COURT CLERK

BY _____

ORDER

Plaintiffs' Motion to disqualify The Honorable Russell B. West in *Allen Hamilton and Lois Hamilton v. Silven, Schmeits & Vaughan, P.C. and Alan J. Schmeits* is hereby:

☒ GRANTED

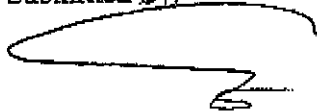
☐ DENIED

Dated this 20th day of July, 2009.

/s/ Gregory L. Baxter

Circuit Court Judge

Submitted By:



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Attorney for Plaintiffs